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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

CARL MITCHELL, et al.,

CASE NO:cv 16-01750 SJO (JPRx)

Plaintiffs,

PLAINTIFFS' RESPONSE TO
DEFENDANTS' EVIDENTIARY
OBJECTIONS

v.

CITY OF LOS ANGELES, et al.,

Date: None

Time: None

Defendants.

Ctrm: 1

Action filed: March 14, 2016

1 Plaintiffs file their Response to Defendant City of Los Angeles' Objections
 2 to Plaintiffs' Evidence. *See* Doc. 38-3.
 3

4 **OBJECTIONS TO ARES DECLARATION**

5 **CITY OBJECTION**

6 **PLAINTIFFS' RESPONSE**

7 1 Ares Decl. ¶9, lines 16-24

8 Statements about what he hears from
 9 community members or LA CAN
 10 members that "there are more law
 11 enforcement arresting people" are
 12 inadmissible.

13 Obj: FRE 801, 802 (inadmissible hearsay)
 14 FRE 602 (speculation, lack of foundation,
 15 lack of personal knowledge)

The statement "[w]hen we see
 or hear from community
 members ... that there are more
 law enforcement arresting
 people" is not hearsay and is
 thus admissible. It is not
 offered for the truth of that
 statement [FRE 801(c)] but as
 foundation for the second half
 of the sentence: "we prioritize
 using our resources to spending
 more time on Community
 Watch[,]" which explains the
 reason for increasing
 Community Watch, a condition
 of the declarant's then-existing
 state of mind. FRE 803(3).

21 2. Ares Decl. ¶10, lines 26-28, lines 1-3 (next
 22 page)

23 Ares makes conclusory, speculative
 24 statements about LAPD arresting people
 25 "regularly in Skid Row" and Sanitation
 26 "seiz[ing] and destroyt[ing] people's
 27 property without personal knowledge of
 28 these facts.

This non-hearsay statement is
 admissible for two reasons: it is
 not offered for the truth of the
 statement but as the basis for
 why Plaintiff LA CAN has
 increased its Community Watch
 functions over the past several
 months as compared to the
 amount of time spent

Obj: FRE 602 (speculation, lack of foundation, lack of personal knowledge); Local Rule 7-7 (inadmissibly devoid of factual matter); FRE 701, 702 (improper opinion). *See e.g., AA v. Raymond* 2013 U.S. Dist. LEXIS 102459 at *21 (E.D. Cal. July 22, 2013) (sustaining objections to improper lay opinion on a motion for preliminary injunction).

previously, as explained in para. 9 of Ares' declaration. FRE 801, 803(3). It is not opinion but, rather, is based on personal observation on the dates set forth in the Ares declaration at p. 3, ¶ 10 lines 4-6. *Id.*

3 Ares Decl. ¶ 12, lines 19-20; Ex. 6a-f

Obj: A tent being in "new and good condition" is not relevant whether property is allowed to be taken, and Ares did not personally see when the tent was "sliced through and destroyed." FRE 402 (irrelevant); FRE 602 (speculation, lack of foundation, lack of personal knowledge).

This is an incorrect paraphrase of Ares' declaration: he attested that he "saw one of the people in the hazmat suits, whose last name is Miller, slicing through a tent, which appeared ... to be new and in good condition before it was sliced through and destroyed." Lines 18-20. Ares took the photographs attached at Exhibit 6 A-F, showing the tent being cut all around. His declaration attests to his personal observations. Ares. Decl. ¶ 12, lines 21-22. *See also United States v. Clayton*, 643 F.2d 1071, 1074 (5th Cir. 1981). FRE 901(a), 1001, 1003 (authentication and admissibility of photographs). The photos depict a relevant scene as it appeared at a relevant time. FRE 401, 402, 901(a).

4. Ares Decl. ¶¶ 13, lines 25-28; 15, lines 18-

There is nothing in Ares Decl. ¶

22; 17, lines 5-10

Declarant's statements about what he heard other people tell LAPD and City employees, and what Ms. Judy Coleman said to someone over the phone are inadmissible. Paragraph 13 also lacks foundation.

Obj: FRE 801, 802 (inadmissible hearsay); FRE 602 (speculation, lack of foundation, lack of personal knowledge)

13 about Plaintiff Judy Coleman. Paragraph 13 attests to what Ares observed and the information contained in the video taken by Ares and submitted as Exhibit 14. Videos are authenticated in the same manner as a still photograph. *Saturn Manufacturing, Inc. V. Williams Patent Crusher and Pulverizer Company*, 713 F.2d 1347, 1357 (8th Cir. 1983). FRE 901.

The statement in Ares' Decl. ¶15 regarding Ms. Coleman's phone call to LAPD ("I was able to hear Ms. Coleman talk on the phone...") is not offered for the truth of the matter asserted, but to explain the motive and intent for his subsequent action of driving her to Central Division to assist her in attempting to recover her property ("Based on this information, I drove Ms. Coleman to the Central Division on Wall Street..."). FRE803(3). Similarly, the statement in Ares' Decl. ¶ 17 is not offered for its truth, but to explain declarant's subsequent action in going with Coleman to the Metropolitan Detention Center. *See* Ares Decl. ¶ 18, lines 11-13.

5. Ares Decl. ¶20, lines 8-10

The statement is admissible

1 What Ares was told over the phone is
2 hearsay.

non-hearsay as a party
admission offered against the
Defendant. FRE 801(d)(2).

3 Obj: FRE 801, 802 (inadmissible hearsay)

4 Moreover, the testimony is
5 admissible on the basis that the
6 declarant has attested that the
7 call was made to a telephone
8 number posted on the LAPD
9 storage facility and identified as
10 the phone number for a place of
11 business and the conversation
12 related to business reasonably
13 transacted over the telephone.
14 FRE 901(b)(6); *see* Exhs. 17B
15 and 17C (depicting storage
16 signs).

17 **OBJECTIONS TO CERVANTES DECLARATION**

18 1. Cervantes Decl. ¶5

19 Obj: Declarant's statement about "a man
20 who did not look like he worked for the
21 LAPD" is speculative and lacks
22 foundation. FRE 602 (speculation, lack of
23 foundation, lack of personal knowledge).

The declarant distinguished
between police officers and
someone "who did not look
like he worked for the LAPD"
but who was going through her
property. Striking her
impression of the person is
unnecessary, but even if the
descriptive clause is stricken as
speculative, her description of
what she observed and the rest
of the paragraph is admissible.

24 2. Cervantes Dec. ¶¶ 9-10

25 Obj: Cervantes' statements about what she
26 was told at the storage facility and by the
27 Department of Sanitation is inadmissible.
28 FRE 801, 802 (inadmissible hearsay)

The statements are admissible
as a party admission offered
against the Defendant. FRE
801(d)(2).

3. Cervantes Decl. ¶ 11

Obj: Cervantes makes speculative statements based on her beliefs about what could have happened. FRE 602 (speculation, lack of foundation, lack of personal knowledge)

The statement is not speculation; it is based on what Cervantes did. She attested that she tried to get her property and was prevented from doing so by the police. Cervantes Decl. ¶ 5. No objection has been made to that portion of ¶ 5, which provides foundation and personal knowledge. FRE 602

OBJECTIONS TO COLEMAN DECLARATIONS

1. Coleman Decl. ¶4, lines 11-12

Obj. FRE 602 (speculation, lack of foundation, lack of personal knowledge); FRE 702 inadmissible legal opinion)

This statement is admissible pursuant to FRE 701 as to why Coleman awoke and moved her property. FRE 701. It is not specialized knowledge that goes to an ultimate issue in this action.

2. Coleman Decl. ¶¶ 5, lines 13-14; 6, lines 17-18, 8, lines 20-22

Obj: FRE 801, 802 (inadmissible hearsay)

Statements attributed to the officers to move the property off of Towne are not offered for their truth; rather, they are offered for Coleman's then state of mind that she needed to - and did - move her property. FRE 803(3) Any statement by Lt. Mathis is a non-hearsay admission by an opposing party. FRE 801(d)(2).

3. Coleman Decl. ¶ 13, lines 20-22. Coleman's statements about what she "felt" if she had not signed the receipt handed her.

This statement is based on Coleman's personal knowledge of her then-existing emotion. FRE 602, 803(3).

1 Obj: FRE 602 (speculation, lack of
2 foundation, lack of personal knowledge)

3 4. Coleman Decl. ¶ 15, lines 1-2, 6-7

4 Obj: Declarant's [sic] did not see her
5 property being taken and the statement
6 about the TV are irrelevant. FRE 602
7 (speculation, lack of foundation, lack of
8 personal knowledge).

Plaintiff attested only that, when she was released from jail and returned to 5th & Towne, her property was gone. That is a personal observation. FRE 602. Foundation is further provided by "Excess Property Receipt" Coleman was given when she was released, which purported to direct her to the location where she could reclaim her property and how long she had to do so. Coleman Decl. ¶ 13. The TV was Coleman's personal property and statements about its seizure, along with Plaintiff's other personal property, is relevant to the instant action. FRE 401.

18 5. Coleman Decl. ¶ 19, lines 21-28

19 Obj. FRE 602 (speculation, lack of
20 foundation, lack of personal knowledge;
21 FRE 801, 802 (inadmissible hearsay)

This paragraph is based on Coleman's personal knowledge of what happened to her in the hospital so it is neither speculative, lacking personal knowledge or lacking foundation. To the extent she includes the content of phone calls and hospital release instructions she received, those statements are admissible to demonstrate her state of mind in leaving the hospital early and the need to obtain new medication. FRE 803(3)

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| <p>1 6. Coleman Decl. ¶¶ 21, lines 6-8; 22, lines
 2 9-10. Coleman makes speculative
 3 statements about MediCal and her physical
 4 health having “suffered tremendously”
 5 without factual support.
 6
 7 Obj: FRE 602 (speculation, lack of
 8 foundation, lack of personal knowledge);
 9 FRE 701, 702 (improper opinion)
 10
 11
 12</p> <p>13 7. Coleman Decl. ¶ 23, lines 16-18.
 14 Coleman’s statements about her walker are
 15 irrelevant because she has not established
 16 that the absence of a walker was a cause of
 17 Defendant’s alleged acts.
 18
 19 Obj: FRE 402 (irrelevant)
 20
 21</p> <p>22 8. Coleman Decl. ¶ 24, lines 19-20. This
 23 conclusory medical statement is
 24 speculative and constitutes improper
 25 opinion.
 26
 27 Obj: FRE 602 (speculation, lack of
 28 foundation, lack of personal knowledge);
 FRE 701, 702 (improper opinion), Local
 Rule 7-7 (inadmissibly devoid of factual
 matter). <i>See e.g., A.A. v. Raymond</i>, 2013
 U.S. Dist. LEXIS 102459, at *21 (E.D.</p> | <p>The declarant supplies personal
 factual support: the sentences
 objected to include her
 assertion that she has been
 unable to test her blood sugar,
 and, following the sentence
 objected to in Paragraph 22,
 Coleman explains that she has
 been unable to see her
 physician. Moreover, it is not
 improper opinion for a witness
 to report on her own condition
 based on opinions that are
 rationally based on the
 witness’s perception. FRE
 701.</p> <p>This objection is inexplicable.
 The refusal to take a mobility
 assistive device to the police
 station when arresting the user,
 and the failure to return the
 walker when that individual is
 released from custody are
 directly relevant to Defendants’
 challenged policies and
 practices here. FRE 401.</p> <p>Coleman explained in
 paragraph 18 and paragraph 19,
 line 20 - to which no objections
 were made - that she was
 hospitalized for pneumonia and
 also treated for her diabetes.
 Coleman has personal
 knowledge of the treatment she
 received. FRE 602, 701. The
 statement is also admissible as</p> |
|--|---|

Cal. July 22, 2013) (sustaining objections to improper lay opinion on a motion for preliminary injunction).

a statement of her then-physical condition. FRE 803(3).

9. Coleman Decl. ¶ 27, lines 9-13; 30, lines 23-24; 31, lines 1-6; 32, lines 8-9
- Obj: FRE 801, 802 (inadmissible hearsay)

Testimony about the hours of operation of the storage facility, based on prior telephone calls to the business, is admissible. FRE 901(b)(6) In addition, the objected to statements inform the declarant's then-existing state of mind and explain her subsequent actions. Coleman Decl. ¶¶ 32-33, lines 9-14.

OBJECTIONS TO ESCOBEDO DECLARATION

1. Escobedo Decl. ¶ 4, lines 12-13
- Declarant's statement about what he was told about accommodations is inadmissible.
- Obj: FRE 801, 802 (inadmissible hearsay)

This statement is admissible based on Escobedo's personal knowledge and as evidence of Escobedo's state of mind. FRE 803(3)

2. Escobedo Decl. ¶ 5; lines 14-15
- Escobedo's understanding of dogs in shelters is speculative.
- Obj: FRE 602 (speculation, lack of foundation, lack of personal knowledge)

Plaintiffs agree that Mr. Escobedo has not laid foundation for this statement, but it is not relevant to any dispositive issue in this motion.

OBJECTIONS TO RICHARDSON DECLARATION

1. Richardson Decl. ¶ 3, lines 8-13
- The statements about the "dramatically" increased enforcement" are "more ... property" discarded "by the Sanitation

The statement is admissible as it is based on Mr. Richardson's personal observations during Community Watch two or three

workers” and all statements stemming from those allegations are inadmissible.

Obj: FRE 602 (speculation, lack of foundation, lack of personal knowledge); FRE 701, 702 (improper opinion), Local Rule 7-7 (impermissibly devoid of factual matter).

times a week. Moreover, the statement is offered to explain why Mr. Richardson is spending more time on Community Watch and helping individuals to recover their property, and the impact the additional Community Watch work on his work for LA CAN. FRE 602, 701.

2. Richardson Decl. ¶¶5, lines 24-27; 6, lines 2-5. The writings on the tags and Declarant’s understanding of what the writings meant constitute speculative hearsay.

Obj: FRE 602 (speculation, lack of foundation, lack of personal knowledge; FRE 801, 802 (inadmissible hearsay).

The statements are admissible based on what Mr. Richardson personally observed on March 23, 2016. Moreover, in paragraph 6, Mr. Richardson describes similar writings that were not objected to associated with a second individual’s property, and police officers informed Richardson that they believed the second individual whose property was surrounded by tape and tagged was arrested. Based on the entire context, the objected to writings are non-hearsay admissions of a party opponent. FRE 801(d)(2).

3. Richardson Decl. ¶ 14, lines 23-25; 16, lines 3-5

Richardson’s statements about what he heard over the phone, and what officers and Mr. Little said are inadmissible.

Obj: FRE 801, 802 (inadmissible hearsay)

The statement is admissible as the non-hearsay admission of a party opponent offered against the Defendant. FRE 801(d)(2).

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| <p>1 4. Richardson Decl. ¶ 17, lines 7-13.</p> <p>2 Statements about what Officer Fiola said</p> <p>3 is inadmissible and Declarant speculates</p> <p>4 about who Dexter Powell is.</p> <p>5 Obj: FRE 602 (speculation, lack of</p> <p>6 foundation, lack of personal knowledge);</p> <p>7 FRE 801, 802 (inadmissible hearsay)</p> <p>8</p> <p>9</p> <p>10 5. Richardson Decl. ¶ 18; lines 16-17</p> <p>11 Declarant speculates about whether the</p> <p>12 facility was open.</p> <p>13 Obj: FRE 602 (speculation, lack of</p> <p>14 foundation, lack of personal knowledge).</p> <p>15 6. Richardson Decl. ¶ 19, lines 22-27; 20,</p> <p>16 lines 1-7; 21, lines 8-13</p> <p>17 Richardson's statements about what Mr.</p> <p>18 Little, the Sergeant and Office [sic] Fiola</p> <p>19 said are inadmissible.</p> <p>20 Obj: FRE 801, 802 (inadmissible</p> <p>21 hearsay).</p> <p>22</p> <p>23</p> <p>24</p> | <p>Officer Fiola's statement is</p> <p>admissible as the non-hearsay</p> <p>admission of a party opponent</p> <p>offered against the Defendant.</p> <p>FRE 801(d)(2). Mr.</p> <p>Richardson's statement</p> <p>regarding "Dexter Powell" is</p> <p>based on his personal</p> <p>knowledge attested to in paras.</p> <p>5-6.</p> <p>This statement is based on Mr.</p> <p>Richardson's personal</p> <p>observations when he arrived at</p> <p>the Parker Center location.</p> <p>There was a gate. Richardson</p> <p>Decl. ¶ 18, lines 18-19.</p> <p>The statements of the officers</p> <p>are admissible as admissions of</p> <p>a party opponent offered</p> <p>against the Defendant. FRE</p> <p>801(d)(2). Mr. Little's</p> <p>statements are admissible</p> <p>because they explain the</p> <p>declarant's then-existing state</p> <p>of mind and Richardson's</p> <p>intent to wait with Mr. Little so</p> <p>he could speak with the</p> <p>supervising Sergeant. FRE</p> <p>803(3), <i>see</i> Richardson Decl. ¶</p> <p>20, lines 1-2.</p> |
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OBJECTIONS TO ROQUE DECLARATION

- | | |
|---|---|
| <p>26 1. Roque Decl. ¶ 7, lines 24-25</p> <p>27</p> <p>28</p> | <p>The statement is admissible as</p> <p>the non-hearsay admission of a</p> |
|---|---|

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|--|--|--|
| <p>1 The statements of what LAPD officer said
 2 to Declarant and to others are
 3 inadmissible.</p> <p>4 Obj: FRE 801, 802 (inadmissible hearsay)</p> | <p>5 2. Roque Decl. ¶ 9, lines 26-28, 1-2 (next
 6 page). The statements of what LAPD
 7 officer said to Declarant and to others are
 8 inadmissible, as are the statements about
 9 what the law states.</p> <p>10 Obj: FRE 801, 802 (inadmissible
 11 hearsay), FRE 702 (improper legal
 12 opinion).</p> | <p>party opponent offered against
 the Defendant. FRE 801(d)(2).</p> |
| <p>13 3. Roque Decl. ¶¶ 12, lines 19-21; 15, lines
 14 9-10; 16, line 12; 18, lines 18-20; 19,
 15 lines 23-24; 20, lines 28, 1-3 (next page);
 16 21, 5-10; 22, 13-15; 23, lines 17-20
 17 These statements about what Roque heard
 18 other people say – a nurse, neighbors, the
 19 officers – are all inadmissible.</p> <p>20 Obj: FRE 801, 802 (inadmissible hearsay)</p> | <p>21 The statements by the nurse,
 22 officers, and city employees are
 23 admissible as non-hearsay
 24 admissions of a party opponent
 25 offered against the Defendant.
 26 FRE 801(d)(2). Statements of
 27 the declarant’s neighbors
 28 [Roque Decl. ¶ 15, lines 9-10]
 are offered to explain the
 subsequent actions of the
 declarant due to his then-
 existing mental state in
 attempting to recover his
 missing property. FRE 803(3),
 <i>see</i> Roque Decl ¶¶ 17-29. In
 addition, regarding Defendant’s
 objection to declarant’s para.
 19, lines 23-24, <i>see</i> FRE
 901(b)(6).</p> | <p>The statement is admissible as
 non-hearsay admission by a
 party opponent offered against
 the Defendant. FRE 801(d)(2).
 For clarity, Plaintiffs note that
 the objection appears to be to ¶
 8, not ¶ 9.</p> |
| <p>26 4. Roque Decl. ¶ 24, lines 21-23
 27 Roque’s statements about what Lt. Mathis
 28 said, and his belief about whether Lt.</p> | <p>The statement is a non-hearsay
 admission by a party opponent
 offered against Defendants.</p> | <p></p> |

Mathis was unsure of facility hours are inadmissible.

Obj: FRE 602 (speculation, lack of foundation, lack of personal knowledge); FRE 801, 802 (inadmissible hearsay)

FRE 801(d)(2). Roque's perception based on observing Lt. Mathis as he made these statements is based on personal knowledge. Moreover, it goes to a material fact: that there is inadequate notice and insufficient procedures for locating and reclaiming personal property post-deprivation. FRE 807.

5. Roque Decl. ¶ 26, lines 7-10; Exh. 8. These statements about what he was told by his attorney and the photographs he did not personally take are inadmissible.
- FRE 602 (speculation, lack of foundation, lack of personal knowledge; FRE 801, 802 (inadmissible hearsay).

Plaintiff can authenticate the photographs, even if he did not take them, as long as he attests that they correctly depict what he is testifying about. He does not have to take them: he observed them being taken. *United States v. Clayton*, 643 F.2d 1071, 1074 (5th Cir. 1981).

6. Roque Decl. ¶ 28, lines 23-28; FRE 801, 802 (inadmissible hearsay)

Lt. Mathes' statement is admissible as a party admission by an opponent used against the Defendant. FRE 801(d)(2). These facts are also confirmed on Defendants' Exhibit "I".

7. Roque Decl. ¶¶ 30, lines 15-16; 34, lines 7-10. The statements about "many people on Skid Row" and public transportation are speculative.

Obj: FRE 602 (speculation, lack of foundation, lack of personal knowledge)

Mr. Roque lived in Compton and a shelter in Long Beach before coming to Skid Row, so he has personal knowledge of how far those areas are from Skid Row. *See* Roque Decl. ¶3. The fact that "many people on Skid Row" are mentally ill is based on his personal

1 knowledge and is also easily
2 verifiable and was put into
3 evidence by Plaintiffs in
4 Exhibit 12 and 13, the City
5 Council's motions on the
6 homelessness emergency.

7 Dated: April 8, 2016

Respectfully submitted,

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9 LAW OFFICE OF CAROL A. SOBEL
10 LEGAL AID FOUNDATION OF LOS ANGELES
11 SCHONBRUN, SEPLOW, HARRIS &
12 HOFFMAN

13 /s/ Carol A. Sobel

14 By: CAROL A. SOBEL
15 Attorneys for Plaintiffs
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